

T H E T R Y A L O F JOHN FOSTER, for Stealing a Mag pye.

The Tryal of John Foster a private Centinel, at Justice-hall in the Old-Bayly in London, on Thursday the Fifth Day of June, Anno Dom. 1693. And in the Fifth Year of Their Majesties Reign, &c. For Felony, in Stealing a certain Live Bird called or known by the Name of a Mag-pye, and a Cage, at the Parish of New Brandford in the County of Middlesex.

THE Court being set, and Proclamation made for silence, as is usual, the Court proceeded as followeth ;
Clerk of the Crown. Keeper of Newgate, bring the Body of John Foster to the Bar, (which was done). John Foster hold up thy Hand, (which he did) thou standest Indicted for Felony by the Name of John Foster of the Parish of Hanwell in the County of Middlesex, Labourer, as in the Indictment is set forth, &c. What sayest thou John Foster ? Art thou Guilty of this Felony whereof thou standest Indicted, or Not Guilty ?

Foster. Not Guilty, my Lord.

Clerk of the Crown. Culpit, How will you be Try'd ?

Foster. By God and my Countrey.

Clerk of the Crown. God send you a good Deliverance.

After which the Prisoner was taken from the Bar, and within a little time after that, he was set to the Bar again by Order of Court, &c.

Clerk of the Crown. Cryer make Proclamation.

Cryer. O yes, if any one can inform Their Majesties the King and Queen's Justices, Their Serjeant, Their Attorney, before this Inquest be taken, between our Sovereign Lord and Lady the King and Queen, and the Prisoner at the Bar, of any Felonies, Treasons, or Misprision of Treason, let them come forth and they shall be heard. God save King William and Queen Mary.

Court. Amen.

Clerk of the Crown. You the Prisoner at the Bar, these Men that you shall hear call'd, and personally do appear, are to pass between our Sovereign Lord and Lady the King and Queen, and you, upon Trial of your Life and Death ; if you will challenge them, or any of them, your time is to speak to them as they come to the Book to be Sworn, and before they be Sworn.

The Prisoner made no Exceptions, and the Jurors Sworn to Try the Issue are these Gentlemen whose Names follow, who were called over, and appeared every one at the first Call.

J U R O R S.

Matthias Cupper.

Crisp Grange.

John Hynde.

Robert Hynde.

Paul Winkle.

William Webb.

Henry Cripps.

Charles Longland.

John Holding.

Robert Longland.

Francis Barry.

Emanuel Davut.

Clerk of the Crown. Cryer count these.

Cryer. One, two, three, &c. Twelve good Men and true, stand together and hear your Evidence.

Clerk of the Crown. John Foster hold up thy Hand, (which he did) ; Gentlemen of the Jury, and you that are Sworn, look upon the Prisoner, and hearken to his Cause ; he stands Indicted by the Name of John Foster of the Parish of Hanwell in the County of Middlesex, Labourer, for that he the 14th. day of May, in the Fifth Year of the Reign of our Sovereign Lord and Lady the King and Queen, with Force and Arms, at the Parish aforesaid, in the County aforesaid, one Bird called a Mag-pye value Two-pence, and one Bird-Cage value Four-pence, the Goods and Chattels of one Robert Connisbey Gent. then and there being found Feloniously, he did steal, take, and bear a-

way, against the Peace of our Sovereign Lord and Lady, the King and Queen, Their Crown and Dignity, &c. To this Indictment he hath pleaded Not Guilty, and for his Tryal he hath put himself upon God and his Countrey, which Countrey you are ; your Business is to enquire whether he be Guilty or Not Guilty ; if you find him Guilty, you are to enquire of his Goods and Chattels, and whether he fled for it ; if you find him Not Guilty, nor that he did fly for it, say so, and no more, and hear your Evidence.

Cryer. Call Robert Connisbey and Richard Sewing, who appeared in Court and were Sworn, and Mr. Connisbey stood up.

Court. Come Sir, what have you to say against the Prisoner at the Bar about a Mag-pye that you lost ?

Mr. Connisbey. My Lord, I lost a Mag pye and a Cage the 14th. of May last, it was taken from my Door off the Hook that it hung upon ; truly, my Lord, I can't say the Prisoner at the Bar stole it from me.

Court. What made you bring him here then ? It is a very small inconsiderable Business to put a Man into Newgate for.

Mr. Connisbey. My Lord, it was none of my doings, it was the Justice of Peace his fault that committed him, I was unwilling he should go to Prison ; I am sorry it happened so, my Lord.

Court. What is the Justice of Peace his Name ?

Mr. Connisbey. His Name is Hawley, my Lord.

Court. Pray where does he Live ?

Mr. Connisbey. At New Brandford.

Court. He was but a foolish man for his pains to commit a poor Fellow to Goal for such a silly trifling business as this is ; he had better have sent him to his Captain, and let him run the Gantlet, &c. Have you any other Witnesses, Sir ?

Mr. Connisbey. I have no more, but the Constable that took the Prisoner.

Court. Took him, d'ye call it, why surely you had no great difficulty about the taking of him, he was not in such fear as to run away for a Mag-pye ; however we will hear the Constable.

Clerk of the Crown. Stand up, Mr. Constable, (which he did).

Court. Is the Constable Sworn.

Mr. Constable. Yes, my Lord, I am Sworn.

Court. Come Mr. Constable, what say you to the matter ? Do you know the Prisoner at the Bar.

Mr. Constable. Yes, my Lord, this Gentleman brought me a Warrant from Mr. Justice Hawley against the Prisoner at the Bar, and I serv'd it upon him at his Quarters at Old Brandford, where I found the Cage and a Mag-pye, and I took them and the Prisoner, and carried them before Mr. Justice Hawley, and his Worship was pleased to commit the Fellow to Prison.

Court. Poor Fellow ! Friend, how long hast thou been in Prison ?

Foster. Almost three Weeks, my Lord, and I have endured a great deal of hardship, and many a hungry Belly I am sure, God help me ; I am very poor, my Lord.

Court. Hark you, Mr. Connisbey, pray what did the worthy Justice of Peace bid you do with the Mag-pye after he had committed the Prisoner ?

Mr. Connisbey. My Lord, he order'd me to keep the Mag-pye and the Cage safe till the Bishop of London's Bayliff came for it, it being a Waife, he said it was forfeited to the Lord of the Mannor ; at which the Court laughed heartily.

Court.

Court. Pray Mr. *Connisbey* what was your Mag-pye worth, and your Cage; was it a Wyer-Cage?

Mr. *Connisbey.* Worth, my Lord, I do not know well what it was worth, about a Groat or Sixpence, as the Indictment sets forth; the Cage was a Twiggen Cage.

Court. Fie, fie! a silly business, a wise Justice indeed! he deserves to be committed himself, till he learns more wit; have you done for the King and Queen Mr. *Connisbey*?

Mr. *Connisbey.* I have no more to say, my Lord, I would not have come here to say this, if I could have helped it.

Court. Come Mr. *Foster*, you have heard what hath been sworn against you; now make your Defence.

Mr. *Foster.* My Lord, Indeed my Lord, I did not steal the Mag-pye; there was a man overtook me (a Stranger to me) in the way between the Two *Brandfords*, and desired me to carry the Bird and the Cage for him, which I did; and when we came to *Old Brandford*, he desired me to keep it, till he call'd for it; he went away, my Lord, but never came any more; so, my Lord, I was loath to kill the Bird, and I did not know whose it was, if I had, I would have restor'd it to the Owner.

Court. A good Defence. Look you, Gentlemen of the Jury, The Prisoner at the Bar, *John Foster*, stands indicted of Felony for stealing a Mag-pye. and a Cage, of the value of 6 *d.* which is a very inconsiderable value.

And you have heard the Evidence for the King, who told you that the Mag-pye was lost, and that it was found upon the Prisoner; but Mr. *Connisbey* does not take upon him to swear that the Prisoner stole it from him; and the Prisoner he denies it, and tells you, That truly he did not take it away, but that he had it of a Stranger that he accidentally met withal upon the Road between the Two *Brandfords*, therefore I don't see any colour of Evidence against the Prisoner: And I must needs say it was a very simple weak thing done of the Justice of Peace to commit the poor Fellow for such a Trifle; I shall leave it to you to consider of the Evidence, and if you find him guilty, you are to say so; but if you think in your Conscience that he did not steal the Mag-pye, then you are to acquit the Prisoner. You had best go over to each other, and consider; you need not give your selves the trouble to go out of the Court about such a small indifferent matter as this.

Then the Jury having considered of their Verdict, and being return'd to their Seats; the Court spake as followeth.

Clerk of the Crown. Gentlemen of the Jury, are you agreed of a Verdict?

Jury. Yes.

Clerk of the Crown. Keeper, set *John Foster* to the Bar (which was done).

Clerk of the Crown. *John Foster* hold up thy hand (which he did); Gentlemen of the Jury, look upon the Prisoner; how say you, is he guilty of the Felony whereof he stands indicted, or not guilty?

Fore-man. Not guilty.

Court. Keeper, bring the Prisoner about into the middle of the Court (which was done)

Court. Look you, *Foster*, because you are a poor man, the Court has considered of your Condition, and acquitted you of the Fees; get you home about your business, but have a care how you meet with a Mag-pye again.

Foster. Indeed, my Lord, I will; Pray God bless King *William* and Queen *Mary*, and all the Honourable Bench. God be with you, my Lord.

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